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c 223 Married Women's Property Act

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CHAPTER 223

The Married Women's Property Act

1. In this Act,

Interpretation.

- (a) "contract" includes the acceptance of any trust or the office of executrix or administratrix;
- (b) "property" includes a thing in action. R.S.O. 1937, c. 209, s. 1.

2.—(1) Every married woman shall be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of a trustee.

Capacity for holding, etc., property.

(2) Every woman married on or after the 1st day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all real and personal property belonging to her at the time of marriage.

Right to hold real and personal property.

(3) Every married woman shall have and hold as her separate property, and may dispose of as such, the wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on and in which her husband has no proprietary interest, or gained or acquired by her by the exercise of any literary, artistic or scientific skill. R.S.O. 1937, c. 209, s. 2.

Right to wages, etc.

3.—(1) Every married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any such action or proceeding shall be her separate property and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

Power to contract and to sue and be sued.

(2) An action shall not lie against a husband for a tort committed by his wife before or after marriage, nor shall he

Husband not responsible for wife's torts.

be joined in any action against his wife to recover damages for a tort committed by her.

Husband not liable for debts contracted by wife before marriage.

(3) A husband shall not be liable for the debts of his wife incurred by her before marriage and shall not be liable on any contracts entered into by his wife before marriage. R.S.O. 1937, c. 209, s. 3.

Married women's contracts after 13th April, 1897.

4.—(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent,

(a) shall be deemed to be a contract entered into by her with respect to and bind her separate property whether she was or was not in fact possessed of or entitled to any separate property at the time when she entered into the contract;

(b) shall bind all separate property which she may at the time or thereafter possess or be entitled to; and

(c) shall also be enforceable by process of law against all property which she may thereafter while discover possess or be entitled to.

Restraint on anticipation.

56-57 V., (Imp.), c. 63, s. 1.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which such married woman is restrained from anticipating. R.S.O. 1937, c. 209, s. 4.

Execution of general power.

5. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, and such property may be seized and sold under an execution against her personal representative after her separate property has been exhausted. R.S.O. 1937, c. 209, s. 5.

Power of court to bind interest. Imp. Act. 44-45 V., c. 41, s. 39.

6. Notwithstanding that a married woman is restrained from anticipation the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. R.S.O. 1937, c. 209, s. 6.

Remedies for protection of separate property.

7. Every married woman shall have in her own name against all persons, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but, except as aforesaid no husband or wife shall be entitled to sue the other for a tort. R.S.O. 1937, c. 209, s. 7.

8. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, and she may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong, and all sums recovered against her in respect thereof or for any costs relating thereto, shall be payable out of her separate property. R.S.O. 1937, c. 209, s. 8.

Wife's ante-nuptial debts, contracts and torts.

9. For the purposes of this Act the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have had or been subject to if she were living. R.S.O. 1937, c. 209, s. 9.

Legal representative of married woman.

10. Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against her creditors than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. R.S.O. 1937, c. 209, s. 10.

Saving of settlements, and restraints against anticipation.

11. The provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman who is a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. R.S.O. 1937, c. 209, s. 11.

Liabilities.

12.—(1) In any question between husband and wife as to the title to or possession of property, either party, or any corporation, company, public body or society in whose books any stocks, fund or shares of either party are standing may apply in a summary way to a judge of the Supreme Court or at the option of the applicant irrespectively of the value

Summary disposal of questions between husband and wife as to property.

of the property in dispute, to the judge of the county or district court of the county or district in which either party resides, and the judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit or may direct the application to stand over from time to time, and any inquiry or issue touching the matters in question to be made or tried in such manner as he thinks fit.

Removal of
proceedings
from county
court into
Supreme
Court.

(2) All proceedings in a county or district court under this section, in which by reason of the character or value of the property in dispute, such court would not have had jurisdiction if this Act had not been passed, may at the option of the defendant or respondent be removed as of right into the Supreme Court, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Supreme Court.

Hearing.

(3) The judge, if either party so requests, may hear any such application in private.

Corpora-
tion's costs.

(4) Any such corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only.

Appeal.

(5) An appeal shall lie to the Court of Appeal from any order made under this section where the value of the property in dispute exceeds \$200. R.S.O. 1937, c. 209, s. 12.

Order of
protection
for the
earnings of
minor
children.

13.—(1) Any married woman,

- (a) having a judgment for alimony; or
- (b) who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or
- (c) whose husband is a mentally incompetent person either with or without lucid intervals; or
- (d) whose husband is undergoing sentence of imprisonment for a criminal offence; or
- (e) whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in Ontario; or
- (g) who is deserted or abandoned by her husband,

may obtain an order of protection entitling her, notwithstanding her coverture, to have and to enjoy all the earnings

of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried. R.S.O. 1937, c. 209, s. 13 (1) *amended*.

(2) The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection, and if an order for discharge is made it may be registered or filed in the same manner as the original order.

(3) Either order may issue in duplicate, and where the married woman resides in a city or town in which there is a magistrate the order of protection or any order discharging it shall be made by the magistrate and shall be registered in the registry office of the registry division in which the city or town is situate.

(4) Where the married woman does not reside in a city or town in which there is a magistrate the order shall be made by the judge or one of the judges or the acting or deputy judge of the division courts or a division court of the county or district in which the married woman resides, and instead of being registered shall be filed for public inspection with the clerk of the division court of the division within which the married woman resides.

(5) The hearing of an application for an order of protection or for an order discharging the same may be public or private at the discretion of the judge or magistrate.

(6) The order for protection shall have no effect until it is registered or filed, and the registrar or clerk shall immediately on receiving the order endorse thereon the day of registering or filing the same.

(7) The order discharging an order of protection shall not be retroactive. R.S.O. 1937, c. 209, s. 13 (2-7).

(8) The order of protection shall protect the earnings of the minor children of the married woman until an order is made discharging the order of protection, and she shall continue to hold and enjoy to her separate use whatever she may have acquired by the earnings of her minor children during the interval between the registering or filing of the order of protection and the making of the order discharging it. R.S.O. 1937, c. 209, s. 13 (8) *amended*.

